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ABSTRACT

A formal investigation was conducted in 1979 to examine allegations of sex discrimination in the promotion of staff at North Gwent College of Further Education in Wales. Unlawful direct sex discrimination was found, although the commission did not conclude that the discrimination was intentional. This package, which consists of materials describing the investigation and excerpts from the actual investigation report, is intended for use by groups wishing to discuss the investigation, its implications, ways in which it could have been improved, and ways in which the dispute could have been avoided in the first place. A brief overview of the allegations and subsequent investigation is presented; it lists seven questions that groups could use as a starting point for discussing the case. The following materials are appended: "Sex Discrimination at North Gwent," a journal article by Harry Eames (the regional official responsible in the case); the original proposal for the investigation; the list of persons appointed to conduct the investigation and their responsibilities; and excerpts from the original commission report issued at the conclusion of the investigation (the findings and conclusions and recommendations). (MN)

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Sex discrimination in Gwent

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October 1987

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IBN 2410

SEX DISCRIMINATION IN GWENT
A CASE STUDY AND EXERCISE

INTRODUCTION

1. The law relating to sex discrimination in England and Wales is described in Information Bank Paper 2413 ('The Law on Sex Discrimination' Keith Scribbins). Another useful source of information is Frank Walton's Information Bank Paper 2237 ('Employment Protection Legislation: Some Notes'). A major part of the legislation is the establishment of the Equal Opportunities Commission and its powers to mount a formal investigation into allegations of discrimination. Over the years the Commission has made various researches of the further education system and, in particular, of the imbalance between the systems employment of men and women and the proportional under representation of women in senior grades. On occasions it has been suggested that the grading of courses system set up by the Burnham Further Education Committee implicity disseminates against women by grading work routinely studied by women (and taught by them) in an inferior way by comparison with work which is more 'male' in its character (see, for example, Journal of Further and Higher Education, Vol No 3, 1977, Women in Education: Some Points for Discussion, Keith Scribbins, and NATFHE Journal, October 1984, Women Since Houghton, Nan Whitbread.

2. The most elaborate excursion the EOC has made in further education came in 1979 when it decided to mount a formal investigation into the promotion of staff and then related matters at North Gwent College of Further Education. The decision to mount an investigation came after the NATFHE Branch had resolved to call on the LEA to rectify the apparent discrimination. The Branch resolution cited the fact that no women had ever been promoted from Lecturer I to Lecturer II in the Business Studies Department even though 36% of the department's staff were women. The history of the reference to the EOC is described in the NATFHE's Regional Official article which appeared in the Association's Journal in March 1980. This is reproduced as Appendix I to this paper. Appendix II sets out the letter sent by the EOC to the College Governors and Appendix III the terms of reference of the Investigation.

3. The Commission's report on its investigation can be obtained from the Commission (EOC, Overseas House, Quay Street, Manchester M3 3HN). The major findings and recommendations appear as Appendix IV to this paper.

SYNDICATE EXERCISE

4. Whilst some have been sceptical about the impact of the Commission's findings the major lessons to be learnt from this case for LEA and institutional managers concern, perhaps, not the outcomes but the circumstances which prompted the Investigation and the role and work involved for the managers who had to respond to it.

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5. Syndicate groups may find it helpful to base their discussions on the following questions.

5.1 Could what happened at North Gwent College happen at any college or polytechnic. If not what is special about the North Gwent case?

5.2 Are formal investigations rather than the perusal of similar issues solely through Industrial Tribunals, more or less likely in the future?

5.3 What could have been done to avoid the dispute?

5.4 What kind of response might best have been made to the EOC formal investigation.

5.5 What kind of procedures, data, and college policies might best protect an institution or LEA if an investigation should come to be made of them.

5.6 What kind of national data and services can be drawn on by an institution or LEA to assist in dealing with an investigation.

5.7 What would you predict as the long term outcome of the investigation in North Gwent.

APPENDIX I

Sex discrimination at North Gwent

Relatively few women reach senior posts in FHE and the proportion seems to be getting lower, not higher. Even in business studies departments, where women staff usually predominate, a man is often made head. In spite of this apparent lack of promotional opportunity very few sex discrimination cases have been brought by members before industrial tribunals or the Equal Opportunities Commission. But last winter, women staff at North Gwent College of Further Education became indignant when a list of new promotions included only men, and decided to pursue the matter.

Harry Eames*

Ebbw Vale women staff members at North Gwent College

On 15 January 1979 the principal of North Gwent College of Further Education, Ebbw Vale, published a newsletter entitled 'College Upgradings – Session 1978/79'. This newsletter indicated that the authority had agreed six upgradings in the college and that the principal would be making recommendations to the governing body that afternoon. The six individuals to be recommended were named in the newsletter; they were all men. This proved to be the last straw so far as the women staff were concerned, and most of them signed a letter to the chairman of the governors complaining of discrimination against women staff. Nevertheless, the governing body rubber-stamped the principal's recommendations.

To understand the indignation of the women staff it is necessary to look at the distribution of senior posts with regard to sex. About 54% of the college staff have posts above the basic grade: of the 59 staff, 27 are at Grade I and 32 at Grade II or above. There are 11 women LIs and 2 women LIIs, while 16 men are LIs and 30 men are LIIs or above.

Thus, 64 per cent of men hold posts above LI, and only 15 per cent of women hold posts above LI. The only women who are not Lecturers I are an LII appointed about 14 years ago to a post that carried special responsibility for women students' welfare, and an upgrading LI to LII about 4 years ago. Both are in the science department.

There are three departments in the college: Business Studies, Engineering, and Science and Mathematics. The discontent is centred on the Business Studies department which consists of 14 men and 8 women. The following facts illustrate the situation:

(a) In this department the 8 women are all LIs. Two teach English, General Studies, etc. Six teach Secretarial Studies, Office Skills, etc.

All are well qualified for the work they undertake and a number have long service in the college, i.e., 2 have been in post for 16 years, 2 have been in post 14½ years.

(b) Of the 14 men in the department 5 are LIs, two having been appointed this session and none of the other three having more than about five years' service in the college.

(c) There are three sections in the department. The Secretarial section is staffed by 1 man and 6 women, the man is an LII and is in charge of the section. The post was advertised in 1972 and initially called for male applicants only, although this was altered following a protest.

(d) Of the 22 members in the Business Studies department none of the women are graded above the basic scale LI as compared with 64 per cent of the men.

Branch support

Following the rebuff by the governing body, the women contacted the Manchester office of the Equal Opportunities Commission but were advised to take the matter up through trade union channels in the first instance. Following a visit to the college to establish the facts, the Regional Official advised the women to seek Branch support. At a Branch meeting early in February attended by the Regional Official, the college principal, and about forty members of the Branch the following was resolved:

'The Ebbw Vale Branch of NATFHE, noting that whilst over 36% of the staff in the Business Studies department are women, not one woman has ever been promoted from lecturer grade I to lecturer grade II, draw the attention of the Governing Body and the Local Authority to this apparent discrimination against women. It calls upon the Local Authority to rectify the situation forthwith.

'In the event of informal approaches to the Local Authority not resolving the issue, the Branch Officers are authorised to seek the approval of the National Executive Committee of NATFHE to declare a Collective Dispute and the Branch pledges its full support.'

The Branch Officers were advised to activate the recently agreed collective disputes procedure for Gwent. The Authority seemed reluctant to hold a meeting and made excuses, but on 12 March the Branch Secretary led a deputation to a sub-committee of the governing body. That sub-committee affirmed that they were satisfied that the principal's recommendations had been made without reference to sex. On 10 April the recommendation of the sub-committee was taken at a special meeting of the full governing body. Again, a negotiating team led by the Branch Secretary made the Association's case, but the governors affirmed they were satisfied that a case had not been made to indicate there had been discrimination in upgradings. The Branch registered a FAILURE TO AGREE and took the matter to the NATFHE Liaison Committee.

Whilst these meetings were occurring, the Equal Opportunities Commission became active. In mid-February three officers of the Commission visited the college and took statements from the women, representatives of the college management, and the authority. Subsequently, three of the women members of staff sent the form 'Questionnaire of person aggrieved', under the Sex Discrimination Act 1975 Section 74 (1)(a), to the principal of the college. The same three women wished to make individual complaints to the Industrial Tribunal regarding discrimination and these were entered early in April (there was a three-month time limit starting on 15 January).

The Gwent Liaison Committee, which had been kept informed of the dispute at Branch level, agreed to support the Ebbw Vale Branch and sought to activate the authority stage of

*Harry Eames is the Regional Official responsible in the case.

the collective disputes procedure. Following some initial reluctance, the authority agreed to take the issue to a disputes committee in mid-May. At that meeting the Regional Official led for the Association. The Association's case centred on the newsletter published by the principal which set out in general terms a method by which the six staff upgraded had been selected. Representatives of the staff had not been consulted about a method of selection, nor was any appeal procedure provided for any individual who felt aggrieved as a result of the recommendations. Of the six upgradings, five were to Lecturer II and it was presumed that this resulted mainly from the 1978 salary award which increased the number of LII posts based on Category V work by 10%. This fact was not mentioned in the newsletter; on the contrary it referred to 'the increased workload leading to the upgradings'. The Management side of the Burnham Committee agreed to the 10% change specifically because they recognised the lack of promotional opportunities for staff undertaking mainly Category V work. Since the courses in the office skills area are largely Category V, if that were not taken into account on this occasion by the governing body it discriminated against the women.

It was further pointed out to the disputes committee that nowadays there is, in a practical sense, no significant difference between the duties carried out by a Lecturer I and those carried out by a Lecturer II. Very frequently when an upgrading occurs the timetable remains unaltered except that it is reduced. In theory, additional administrative duties are assumed. Nowadays, LIs form a minority of the staff, and bearing in mind that there is a registrar with office staff, there simply is not the administrative or supervisory work to distribute, or if there is, it is contrived or trivial. Thus, devising a list of criteria for upgrading, with or without an order of importance or weighting, cannot be justified on logical grounds. The plain fact is that if someone is adequate and has the qualifications to be an LI then that person is adequate and has the qualifications to be an LII. Thus, by the choice of criteria, women can be denied promotion opportunities. If, for instance, qualifications – particularly degrees – are regarded as important, then women in an office skills section such as at Ebbw Vale are denied promotional opportunities. If criteria were to be adopted, the principal, who is a newcomer to the college, should have recognised the imbalance which had developed in the college so far as senior posts and the lack of career opportunities for women staff were concerned.

The Authority were asked to recognise this imbalance and partially to correct it by moving the percentage point for Lecturers II created by Category V work from the median to the maximum point of the range and that the two extra Lecturers II created should go to women. The authority declined to do this and a FAILURE TO AGREE was registered. The collective disputes procedure provided for a reference to independent arbitration by joint agreement, but the authority declined this on the grounds that the issue was in the hands of the EOC who would give a decision, by which they would abide.

Burden of proof

So far as the Industrial Tribunal is concerned, the individuals have made their complaint, supported by the Association, and will be represented by the Regional Official at the hearings.

Pursuing a case of this sort under the Sex Discrimination Act 1975 presents certain difficulties. The case would need to be mounted under Section 1(1)(a) or Section 6(2)(a) or (b); that is, that there had been what is called 'Direct Discrimination' and that:

'The Governing Body (or other employer) treated the women less favourably in regard to promotion than they treated a man on the grounds of her sex'.

The burden of proof would be on the complainant, and in any comparison between individuals on a particular promotion the employer has a fair range of ways of showing that it was not sex that motivated his acts. On the other hand, the Tribunal has to consider whether sex discrimination can be inferred from the circumstances, and the statistical evidence concerning the college establishment at Ebbw Vale must be strong. At all events, a hearing by the Industrial Tribunal has been adjourned until such time as the EOC finish their work.

In July 1979 the Equal Opportunities Commission decided to embark upon a formal investigation under Section 57(1) of the Sex Discrimination Act into the promotion of staff at the college and other related matters. They named the authority, governors of the college and present and former members of the college management as persons they believe may have done or be doing acts in contravention of the Act. They appointed two commissioners to carry out the investigation: namely, Lady Margaret McCarthy and Ms Sandra Brown. Subsequently they advertised in the press inviting anyone who wished to give information about the subject of the investigation to notify the commissioners. In January the Regional Official was called to give evidence and it is believed that the commissioners will in the near future take evidence from women staff, management, etc.

Clearly a reference to the Equal Opportunities Commission is a lengthy business. Furthermore, it is difficult to deduce what the outcome will be. Presumably, if they are satisfied that discrimination on grounds of sex occurred, they can order the authority to cease discriminating and can commence a prosecution if they do not comply. However, that would not necessarily result in an upgrading for any of the women. Like the Industrial Tribunal, they do not have the power to ensure that the authority upgrades the complainants.

No doubt the Men of Gwent on the County Council would proclaim, if questioned, that their women teachers achieved equal pay many years ago. This is clearly a hollow mockery at the Ebbw Vale College where the operation of the grading system has produced large disparities between the average pay of men and women.

It is difficult to see that the law, despite the efforts of the Equal Opportunities Commission and the recourse to the Industrial Tribunal, will be effective in bringing about a favourable change for these women. Despite the difficulties, the best chance of success lies in collective action by the Association.

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APPENDIX II

Dear Sir [redacted]

A PROPOSED FORMAL INVESTIGATION BY THE EQUAL OPPORTUNITIES COMMISSION INTO THE PROMOTION OF STAFF TO SENIOR POSTS AT THE NORTH GWENT COLLEGE OF FURTHER EDUCATION AND OTHER RELATED MATTERS

I have been asked by the Equal Opportunities Commission ("the Commission") to write to you in your capacity as a Governor of the North Gwent College of Further Education, Ebbw Vale, [illegible]nt, MP3 6LE ("the College") to inform you that the Commis[illegible]n are considering whether or not to embark upon a formal i[illegible]estigation under section 57(1) of the Sex Discrimination Act, 1975, as amended ("the Act") into the promotion of staff at the College and other related matters. The Commission are proposing to name Gwent County Council ("the Local Authority"), the Governors of the College, the former Principal, Mr. V. A. Hewlett, the former Head of the Business Studies Department, Mr. C. P. Walby, the present Head of the Business Studies Department, Mr. T. Rich, and yourself in your capacity as the Principal of the College, in the terms of reference of the investigation as persons whom they believe may have done and (in the case of the Local Authority, the Governors, Mr. Rich and yourself in your capacity as Principal of the College) may be doing acts in contravention of the Act. Accordingly, I am sending separate letters to the other persons I have mentioned above, and as a matter of courtesy I am also sending copies of all letters to your Director of Education, Mr. E. H. Loudon.

I hereby notify you on the Commission's behalf, in accordance with section 58(3) of the Act and the Sex Discrimination (Formal Investigations) Regulations, 1975, (S.I. 1975 No. 1993) of the proposed investigation and of its draft terms of reference which are contained in Appendix 1 to this letter.

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I also hereby offer you, in accordance with section 58(3A) of the Act, an opportunity of making oral or written representations (or both oral and written representations if you think fit).

I should be obliged if you would acknowledge receipt of this letter.

The grounds for the Commission's belief (as described in the attached Appendix) may be summarised as follows:

(1) At all material times since the coming into force of the Act on the 29th December 1975, the Local Authority, the Governors of the College, the former Principal of the College, the Heads of Department and yourself in your capacity as Principal, have been and remain responsible (inter alia) for

(a) making arrangements for the purpose of determining who should be offered employment at the College;
(b) deciding whether or not to offer employment to particular individuals; and
(c) affording members of the staff of the College access to opportunities for promotion;

(2) There are 56 Lecturers at the College;

(3) All Heads of Department and Senior Lecturers are male;

(4) Of the 43 male members of staff, 3 are Heads of Department, 1 is a Principal Lecturer, 7 are Senior Lecturers, 15 are LII Lecturers, and 17 are LI Lecturers.

(5) Of the 13 female members of staff, 2 are in the LII grade and both of them are employed in the Science Department;

(6) In the Business Studies Department, there are 23 members of staff (and 1 vacancy); the Head of Department, 3 Senior Lecturers, 6 LII Lecturers and 5 LI Lecturers are male, and 8 LI Lecturers are female; there are no female members of staff employed above the LI grade, notwithstanding that several female members of staff have been employed in the College for a considerable period of time and are qualified to be employed above the LI grade;

(7) In January 1979, the following male members of staff were promoted:

(a) <u>Business Studies Department</u>
Mr. Murphy (from LI Grade to LII Grade);
Mr. Rutter (from LI Grade to LII Grade);

(b) <u>Engineering Department</u>
Mr. Jones (from LI Grade to Senior Lecturer);
Mr. Arnold (from LI Grade to LII Grade);

Contd...

(c) Science and Mathematics Department
Mr. Bell (from LI Grade to LII Grade);
Mr. Evans (from LI Grade to LII Grade);

(8) In January 1979, Mrs. Davies, Mrs. Goodall, Mrs. May and Mrs. Rees, who were employed in the Secretarial Section of the Business Studies Department in the LI Grade, were not promoted to the LII Grade, notwithstanding the fact that they were well qualified for such promotion;

(9) There appears to be a legacy of past discrimination against female members of staff employed at the College prior to the coming into force of the Act; for example:-

(a) no female member of staff was ever appointed at LII Lecturer in the Business Studies Department notwithstanding that several female members of staff were well qualified to be so employed;

(b) in about 1972, the College advertised externally for a male Head of the Secretarial Section of the Business Studies Department; and when some of the female members of staff protested about this they were told by the then Head of the Department, Mr. Walby, that "where there are a lot of women, a man is best for Section Head";

(c) the post was re-advertised omitting the word "male" and a Mr. Davies was appointed notwithstanding that he was less well qualified for the post than Mrs. May;

(10) It would appear that, notwithstanding the coming into force of the Act on the 29th December 1975, there has been a continuing policy or practice of not appointing female members of staff to posts above the LI grade.

I should emphasise that the Commission has not in any way prejudged the issues involved and would welcome an opportunity to consider both oral and written representations.

In accordance with section 58(3A) of the Act, you may, if you wish to avail yourself of the opportunity of making oral representations, be represented:-

(a) by Counsel or a solicitor; or

(b) by some other person of your choice, not being a person to whom the Commission object on the ground that such person is unsuitable.

If you wish to make written representations in the matter, the Commission would be obliged if such representations could be received by the Commission not later than 14 days before the date fixed for the hearing of oral representations (if any). Any oral representations which you wish to make

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will be heard by two Commissioners, Ms. Sandra Brown and Lady Margaret McCarthy, to whom this function (together with the function of receiving any written representations) has been delegated by the Commission. I should be grateful if you would inform us as soon as possible whether you wish to make oral representations or written representations or both. Any representations should be made not later than the 28th June 1979. No doubt a mutually convenient date, time and place can be arranged for the hearing of any oral representations before that date.

I should be grateful if you would address any correspondence in this matter to Mr. Wilfred Knowles at the above address.

Yours faithfully,

Chief Executive

Enc.

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TERMS OF REFERENCE

The Equal Opportunities Commission believe that:-

(a) Gwent County Council ("the Local Authority") by themselves and by their servants or agents;

(b) Councillor H. S. McKelvie
Councillor T. H. Mytton
Councillor R. J. Beacham
Councillor R. W. Jones
Councillor A. E. England
Councillor W. J. Gore
Councillor W. I. Jones
Councillor Keith Jayne
Councillor R. F. Morgan
Councillor H. S. Snellgrove
Councillor G. F. Webb
Councillor G. Hayward
Councillor B. Greenland
Councillor C. Jones
Councillor D. H. Thomas
Councillor Mrs Marie Jones
Mr. W. G. Powell
Mr. G. R. Bell
Mr. N. Mainwaring
Mr. G. Edwards
Mr. H. Thomas
Mr. H. Crosbie
Mr. L. Evans
Mr. M. Smith
Mr. P. P. Murphy

in their capacity as the Governors of the North Gwent College of Further Education, Ebbw Vale, Gwent, NP3 6LE ("the Governors") by themselves and by their servants or agents;

(c) Mr. V. A. Hewlett of 24 Glade Close, Coedeva, Cwmbran, Gwent, in his capacity as the former Principal of North Gwent College of Further Education, Ebbw Vale, Gwent, NP3 6LE ("the College";

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(d) Mr. F. D. O. Evans of "Waun-Ddu", Dufferyn Road, Llangynidr, Powys, in his capacity as Principal of the College;

(e) Mr. C. P. Walby of 17 Bourneville Terrace, Tredegar, in his capacity as the former Head of the Business Studies Department of the College;

(f) Mr. Tyrone Rich of 4 Laburnham Grove, Pontllanfraith, Blackwood, in his capacity as the Head of the Business Studies Department of the College,

may have done, and (in the case of the Local Authority, the Governors, Mr. F. D. O. Evans and Mr. T. Rich), may be doing the following acts in contravention of the Sex Discrimination Act, 1975, as amended ("the Act") as follows:-

(A) <u>As regards the Local Authority, the Governors, Mr. V. A. Hewlett, Mr. F. D. O. Evans, Mr. C. P. Walby and Mr. T. Rich</u>

(i) acts in relation to the way they have afforded female staff employed at the College access to opportunities for promotion to posts above Grade LI (Section 6(2)(a) read together with Section 1(1)(a));

(ii) acts in relation to the arrangements they have made for the purpose of determining who should be offered employment as Heads of Department, Senior Lecturers, and Lecturers Grade LII (Section 6(1)(a) read together with Section 1(1)(a)); and

(iii) acts in relation to the refusal or deliberate omission to offer female members of staff employment as aforesaid; (Section 6(1)(c) read together with Section 1(1)(a)).

(B) <u>As regards the Local Authority, the Governors, Mr. F. D. O. Evans and Mr. T. Rich</u>

continuing unlawful acts of the kind specified in paragraphs A(i) (ii) and (iii) above.

(C) <u>As regards the Governors, Mr. V. A. Hewlett, Mr. F. D. O. Evans, Mr. C. P. Walby and Mr. T. Rich</u>

knowingly aiding the Local Authority by themselves and by their

servants or agents to do all or any of the above acts contrary to Section 42 of the Act.

The investigation will be confined to the above acts.

APPENDIX IV

Formal Investigation Report: Ebbw Vale College of Further Education

Pages 128-149 of the Commission's report set out the summary of findings and conclusions (chapter 11) together with the recommendations (chapter 12). These chapters are reproduced in the following pages.

CHAPTER 11

SUMMARY OF FINDINGS AND CONCLUSIONS

A. PROMOTIONS 1962 - 1978

The Promotion System

Throughout the period from the opening of the College in 1962 up until 1978 the promotion system was at its most arbitrary and subjective. A very heavy emphasis was placed upon the role in the promotion system of the Principal and, to a lesser extent, the three Heads of Department. Although the College's Articles of Government state that promotion of members of the lecturing staff should be made by the Governors subject to confirmation by the Authority, in fact the Governors relied heavily on the recommendations of the Principal. The allocation of promotion posts between the Departments, and the decisions on which individuals from within the Departments should be recommended for promotion, were in practice made by the Principal in consultation with the Heads of Department. The fairness of the system was thus dependent upon these individuals.

A number of factors, which would have rendered the decisions of the Principal open to a measure of scrutiny and would have acted as an external check upon the fairness of his recommendations for promotion, were noticeably absent from the system. In the first place, there were no written or published criteria upon which recommendations should be based. The factors which were taken into consideration when making such recommendations were apparently determined by, and known only to, the Principal and the Heads of Department. There was certainly no clear communication to the lecturing staff of the criteria which were employed in making decisions which vitally affected their careers. Secondly, there was no opportunity for lecturing staff to state their own case as to why they should be considered for promotion. Applications were not invited and there were no interviews of candidates. The staff appear to have been merely informed of who had been promoted without explanation

of the reasons for the decision. Thirdly, there was no formal system of staff appraisal or counselling. Staff were given no systematic indication of how the quality of their work was regarded by those who had the power to recommend them for promotion, of how their work was seen to be developing over a period, or of how they might improve their promotion prospects.

Given a promotion system which concentrated the power of decision-making so heavily in the person of the Principal and, to a lesser extent, the Heads of Department, and given the absence of any effective external checks upon the fairness of the exercise of this power, then, in the case of a person applying the system who is predisposed, whether consciously or unconsciously, to discriminate on the ground of sex, the system did nothing to remove the predisposition or to act as a check upon it.

The Commissioners accept evidence showing that the former Head of the Business Studies Department, who was in post from the opening of the College until 31st August 1978, held attitudes which were unfavourable to the promotion prospects of women lecturers in the Business Studies Department. There is evidence of unfavourable attitudes towards the notion of women holding supervisory positions, towards married women being in paid employment, towards the value of secretarial studies (an area taught overwhelmingly by women), and towards the particular women in the secretarial studies section who, he professed to believe, did not want promotion.

In the period up to the coming into force of the Act, men were awarded far more promotions in the Business Studies Department than were women, and although men outnumbered women in the Department the difference in the number of promotions was still disproportionate. In addition, all of the women's promotions were from the basic grade to that immediately above, whereas men were awarded promotions at higher levels.

After the coming into force of the Act, the Local Authority issued no written instructions or guidance to the Principal or the Governors concerning the implications, for the proper exercise of their responsibilities, of the Act; nor is there anything to suggest that the Authority took any other reasonable steps to prevent them from committing acts contrary to s.6(2) (or the other relevant provisions) of the Act.

There were two promotions in the Business Studies Department from the coming into force of the Act until 1978, one at S.L. in 1975/76, and one at L.II in 1976/77. Both were awarded to men.

The Commissioners conclude:

that the promotion system in the College in this period was capable of leading to, and created a serious risk that it would result in, acts of unlawful direct sex discrimination against women lecturers in the Business Studies Department.

The 1975/76 Promotion in the Business Studies Department

At this time there were no women lecturers in the Business Studies Department on a grade higher than the basic L.I grade. There were, therefore, no women who could be considered candidates for the S.L. promotion. Thus there could be no unlawful sex discrimination in the decision to promote a man to the S.L. vacancy.

It has been noted, however, that in the history of the College up until this time, the nature of the promotion system and the sex-biased attitudes of the former Head of the Business Studies Department made it likely that any women candidates in that Department would have been treated less favourably than men, on the ground of their sex, in the way that they were afforded access to opportunities for

promotion. The fact that because there were no women candidates for this S.L. promotion there was no unlawful sex discrimination needs to be viewed, therefore, in this light.

With the reservations expressed above, the Commissioners conclude that the promotion to S.L. in the Business Studies Department in the 1975/76 academic year did not constitute unlawful sex discrimination against women lecturers in the way that they were afforded access to opportunities for promotion or by refusing or deliberately omitting to afford women lecturers access to such opportunities.

The 1976/77 Promotion in the Business Studies Department

There were 6 women lecturers who should have been considered for the L.II promotion in Business Studies in 1976/77. The Commissioners believe that the former Head of the Business Studies Department, who has been found to have attitudes unfavourable to the promotion prospects of the women lecturers in his Department, did not, because of their sex, give the women lecturers the same careful and serious consideration as was given to their male colleagues when making his recommendation for promotion to the Principal. This was of greater importance on this occasion than on others since the Principal was relatively new to the College and forced to rely more on this occasion than on later occasions on the recommendations of the Heads of Department. The promotion system allowed the women no opportunity to state their own case for consideration.

The Commissioners conclude that the L.II promotion in the Business Studies Department in 1976/77 did involve unlawful sex discrimination, contrary to s.6(2)(a) taken in conjunction with s.1(1)(a) of the Act, against the L.I women lecturers in that Department, in relation to the way in which they were afforded access to opportunities for promotion.

In making this finding, the Commissioners do not suggest that the person who was promoted was in any way unqualified, but that the women were afforded less favourable treatment on the ground of their sex in the way in which they were considered for possible promotion.

Since the former Head of the Business Studies Department acted as he did in the course of his employment by the Gwent County Council, the County Council are responsible by virtue of s.41(1) of the Act (See Chapter 5).

The former Head of the Business Studies Department knowingly aided the above unlawful acts within the meaning of s.42(1) (See Chapter 5). He had the knowledge of the abilities of the candidates and was required to make recommendations to the Principal for promotion based upon this knowledge. He did not give the same serious and careful consideration to the women lecturers as to their male colleagues in his Department when making these recommendations.

There is no evidence that the Principal had any knowledge that the recommendations of the former Head of the Business Studies Department involved potential sex discrimination. Neither is there any evidence that the Governors had any knowledge that the recommendation for promotion which they were asked to ratify involved potential acts of sex discrimination. The unlawful sex discrimination was therefore confined to the Gwent County Council and the former Head of the Business Studies Department.

There remains the question of whether the unlawful acts of sex discrimination also involved a refusal or deliberate omission to afford the women lecturers access to opportunities for promotion. Since the final decision on who was to be recommended for promotion lay with the Principal and the final decision on who was to be promoted lay with the Governors, and since they had no knowledge that the recommendation of the former Head of

the Business Studies Department was discriminatory, the Commissioners find that there was no refusal or deliberate omission on grounds of sex to afford the women lecturers access to opportunities for promotion.

B. PROMOTIONS 1978 - 1981

The Promotion System

Although the Principal's introduction and publication to staff in 1979 of written criteria for assessing individuals for promotion was, in principle, an improvement in the fairness of the promotion process, the system was still marred by the concentration of decision-making, the lack of opportunity to make application for promotion, the absence of interviews of potential promotees, and the absence of a systematic mode of staff appraisal or counselling. The announcement of the criteria, a matter of hours before the Principal was to submit his recommendations for promotion to the Governors for approval, was far too late to give staff an opportunity to question his recommendations against the criteria. The criteria were unclear, and still permitted a wide degree of subjectivity in their application. The result of the application of the criteria was that the two L.II promotions available to the Business Studies Department in 1978/79 were received by men.

The Commissioners conclude, therefore, while giving due credit to the Principal for his introduction and publication of written criteria:

that, although there was a new Head of Business Studies, and a relatively new Principal who had published criteria for promotion, the promotion system at the College in this period was still capable of leading to, and still created a risk, though less serious, that it would result in, acts of unlawful sex discrimination against women lecturers in the Business Studies Department.

The 1978/79 Promotions in the Business Studies Department

On the face of it, in terms of experience and qualifications, the qualifications of the women for promotion on this occasion were at least as good if not better than those of the men who were promoted. All of the women had longer teaching experience, both within the College and in total, than either of the men. All of the women had considerable industrial and/or business experience before entering teaching whereas one of the promoted men had only one year's such experience. All of the women had teaching qualifications directly related to the subjects they taught. One of the men had a teaching qualification, the other being entitled to teach in further education by virtue of the possession of a degree in a subject he taught little at the College at the time of his promotion. In these circumstances, in the absence of a cogent explanation, it would appear that the principal reason for having recommended the men for promotion and not having recommended the women for promotion was a reason connected with their sex.

The Principal has explained his decision to recommend the two men and none of the women for promotion on the basis of his application of the criteria for upgrading which he introduced at the time of these upgradings. The method of application of these criteria has therefore been examined. This examination has revealed that the criteria were, in a number of ways, unevenly applied to the men and women candidates, in each case to the disadvantage of the women.

First, most of the individual criteria were interpreted by the Principal in such a way as to treat the women less favourably than the men. The criteria were simply a list of headings with no indication of how they were to be interpreted or applied. They were open to a number of interpretations, as is evidenced by the differences of interpretation between the complainants and the Principal

and even between the Head of the Business Studies Department and the Principal. This latter is in spite of the fact that the Head of Business Studies stated that the criteria were drawn up by agreement with the Heads of Department, and the Principal stated that he discussed the criteria with the Heads of Department in relation to particular promotions. In the event, the Principal's interpretation, which was the one which was put into effect, clearly disadvantaged the women and favoured the men.

Second, there were inconsistencies in the Principal's reasoning concerning the application of different criteria, again operating to the disadvantage of the women. Reasoning which was applied when it favoured the men in respect of one criterion was not applied when it would have favoured the women in respect of another criterion. For example, relevance is a principle which was heavily emphasized by the Principal in relation to the extra-College experience of the men under criterion (c), but was apparently given a much less heavy emphasis in relation to the teaching qualifications of the women under criterion (e). Also, long teaching experience was not regarded highly on the ground that it is no guarantee of teaching ability, whereas degrees, which are no more of a guarantee of teaching ability, were highly regarded.

Third, the women were doubly disadvantaged in respect of criteria (c) and (g). On the one hand, their extensive experience in business was not highly regarded because it was gained some time ago. This disadvantaged them in relation to criterion (c). On the other hand, the extensive teaching experience of the women, which is the reason for the lapse of time since their experience in business, was also not highly regarded, thus disadvantaging them in relation to criterion (g).

Fourth, the weighting of the criteria disadvantaged the women. The only criterion which was given a lower weighting than the others, criterion (g): "Length of teaching experience", was a criterion for which there was a simple objective measure which clearly showed the superiority of the women.

Fifth, the men were given double credit for the same thing. They were given credit under criterion (b) for having developed the teaching of subjects which they were not appointed to teach. They were also given credit under criterion (f) for having responsibility for these same subjects.

Sixth, the women were disadvantaged because they taught secretarial studies, a subject area taught almost exclusively by women to female students. This counted against them under criterion (b) in relation to category of work taught, and in relation to criterion (f) in relation to subject responsibility.

Seventh, the criteria were applied to individuals by the Principal, in consultation with the Head of Business Studies, with no system of staff appraisal, no applications and no interviews. The candidates were, therefore, dependent upon the knowledge of their work of these two men. This operated to the disadvantage of the women lecturers in the secretarial studies section on this occasion since investigation of the criticisms of the work of the complainants has shown that neither the Principal nor the Head of Business Studies had a detailed knowledge of this area of work or of the teaching contribution made by these women lecturers.

In coming to their findings, the Commissioners have also had regard to the context in which these promotions took place. There are a number of relevant features of the context, all of which have been discussed earlier in this report. Consideration has been given to these features for the

following reasons. Given the background described below, and given that the Sex Discrimination Act had come into operation in December 1975, the Commissioners would have expected that when the Principal introduced change into the promotion system on the occasion of the 1978/79 promotions, by publishing written criteria for promotion, he would have given careful consideration to the question of whether these criteria, their method of application and their weighting offered equal opportunities for promotion to men and women teaching staff. The Commissioners do not consider that he did so. The criteria were unclear and this, added to the fact that decision-making on promotions was still concentrated in the hands of the Principal, still permitted an undue degree of subjectivity in the application of the criteria. The Commissioners consider that these features of the criteria were on this occasion employed to the advantage of the male candidates for promotion and the disadvantage of the women candidates. The relevant features of the context in which these promotions took place are set out below.

First, there is the imbalance in respect of promoted posts of men and women lecturers. (This is set out in Chapter 2). In the Business Studies Department there were at this time 14 men and 9 women lecturers. All 10 promoted posts were held by men. All of the women were on the basic L.I grade, despite the extensive service in the College of some of these women. No women in the Business Studies Department had ever been promoted above L.I.

Second, there is a history of a slower rate of promotion of women than men in the Business Studies Department (see pages 62 and 29).

Third, there is a legacy of past negative attitudes, adversely affecting the women lecturers in the Business Studies Department, towards married women being in paid

employment, towards the notion of women holding supervisory positions, towards secretarial studies (the subject taught by the complainants), and towards the particular women lecturers in the secretarial studies section (see pages 54 - 61).

Fourth, the Commissioners have found that the previous L.II promotion in the Business Studies Department, in the 1976/77 academic year, involved unlawful sex discrimination against the L.I women lecturers in that Department (see pages 67 - 71).

Fifth, there are the features of the promotion system employed at the College which have led the Commissioners to find that the system was capable of leading to, and likely to lead to, acts of unlawful direct sex discrimination against women lecturers in the Business Studies Department (see the Conclusions on page 73 - 74).

In summary, the promotions were based on criteria devised and applied by the Principal. The Commissioners are satisfied that these criteria were applied in a manner which was less favourable to the women candidates than to the men. In considering whether a substantial reason for this was because they were women, the Commissioners believe that the previous history of negative attitudes in the Business Studies Department towards women, the fact that no woman in that department had ever been promoted to L.II and the fact that the promotion system was one which created a risk that it would result in and which had already led to unlawful sex discrimination, are relevant. The Commissioners are not aware of any significant change in the relevant circumstances, other than the change of Principal and Head of Business Studies, and have received no evidence that this change of itself altered the method of making promotions in the College. The Commissioners, therefore, infer from all the circumstances that a substantial reason for the application of the criteria to female lecturers in the

Business Studies Department in a manner less favourable to them than to male lecturers in that department was because they were women.

The Commissioners wish to make it clear that, in coming to their conclusions, they do not dispute the Principal's claim that he was attempting to introduce greater objectivity and order into the promotion system. In addition, the Commissioners do not say that the two men in question were unworthy of promotion. The Commissioners' view is rather that, specifically in respect of the reasons advanced to them for the promotion of the men and the failure to promote any of the women, the claims of the women to promotion were treated less favourably than were the claims of the men, and that a substantial reason for this was because they were women.

The Commissioners conclude that the L.II promotions in the Business Studies Department in the academic year 1978/79 involved unlawful direct sex discrimination, contrary to s.6(2)(a) taken in conjunction with s.1(1)(a) of the Act, against three women lecturers in that Department, in that they were treated less favourably on the ground of their sex than two male lecturers in relation to the way in which they were afforded access to opportunities for promotion. The discrimination lies not in the criteria themselves for they were neutral as stated; but in the manner in which they were applied by the Principal in a way which was less favourable to the women than to the men. Given that the women were, on the face of it, at least as well qualified for promotion as the men, and that the criteria were unevenly applied by the Principal to the men and the women resulting in less favourable treatment of the women, the Commissioners consider that the less favourable treatment of the women resulted in the decision to recommend the men for promotion and not to recommend the women for promotion. The Commissioners also conclude that there was a refusal or deliberate omission on the ground of their sex to afford the women access to opportunities for promotion contrary to s.6(2)(a) of the Act taken in conjunction with s.1(1)(a).

Responsibility for this act of discrimination by the Principal lies with the Gwent County Council by virtue of s.41(1) of the Act. (See Chapter 5).

The Principal aided the above unlawful acts by virtue of s.42(2). He devised and applied the criteria; he alone took the effective decision as to who to recommend for promotion; and he acted knowingly for the purpose of s.42(1)(see Chapter 5).

With respect to the Governors, the position is as follows: On the morning of the day when the Principal's recommendations were to be put to the Governing Body for approval, the Principal took the unprecedented step of announcing his recommendations to the staff in advance of the Governors' meeting by means of a Newsletter. The written criteria for promotion were also contained in the same Newsletter. The women members of staff were very distressed when they received the news of the proposed upgradings and immediately wrote a letter to the Chairman of the Governors protesting at "the obvious discrimination against the women staff". This letter of complaint was distributed to the Governors by a staff representative on the Governing Body at the meeting of the Governing Body that afternoon. The evidence relating to the meeting of the Governing Body shows that there was concern amongst the Governors that the Principal had chosen to announce his recommendations to the teaching staff before they were announced to the Governors. As to the complaint of the women members of staff, the evidence suggests that, despite concern expressed by one woman governor, the matter resolved itself into a question of a vote of confidence in the Principal. In the event, without seeking further information or discussing the complaint with the women members of staff, the Governors approved the recommendations of the Principal that afternoon in the full knowledge that these recommendations had given rise to a complaint of unlawful sex discrimination. The Commissioners consider

that the Governors should not have approved the recommendations before fully investigating this complaint. The question arises as to whether the Governors are liable for the unlawful acts of the Principal and his employer, the Gwent County Council, by having knowingly aided them to discriminate unlawfully. The Governors were not involved in the uneven application of the criteria nor is there any evidence that they had knowledge of the uneven application of the criteria. In these circumstances, they did not have sufficient knowledge of all the circumstances of the unlawful conduct which they aided to be liable under s.42(1).

PROMOTIONS 1981 - 1982

In 1981/82 there were two promotions in the Business Studies Department, one at S.L. and one at L.II. The S.L. promotion was awarded to a man and the L.II promotion to a woman. This was the only L.II promotion awarded to a woman in the Business Studies Department from the coming into force of the Act until this time.

The Principal's modifications to the procedures introducing, as they do, a greater involvement in the promotion process of the members of staff concerned with particular promotions, mark a significant improvement in the fairness of the promotion system. The evidence of a move on the part of the Local Authority to increase the involvement of the Governors in the promotion process is also to be welcomed. Nevertheless, the criteria for assessing individuals for promotion remained the same as those used in 1978/79 and are basically subject to the same criticisms. It was the uneven application of these criteria to men and women lecturers in the 1978/79 promotions in Business Studies which led to unlawful acts contrary to s.6(2)(a) taken in conjunction with s.1(1)(a) of the Act.

The Commissioners conclude that the modifications to the promotion procedures for the 1981/82 promotions reduced the likelihood of unlawful sex discrimination. However, the retention of the same criteria which were used in the 1978/79 promotions, together with the fact that decision-making about recommendations for promotion was still concentrated in the hands of the Principal and the Heads of Department, rendered the promotion system still at risk of leading to unlawful sex discrimination.

PROMOTIONS 1982 - 1983

The Commissioners note the concern of the Local Authority at the number of complaints arising in all of its colleges of

further education regarding the operation of the promotion procedures, and welcome its decision to review these procedures and to establish a common procedure for all the colleges.

The Commissioners consider that a number of features of the new procedures are particularly laudable and meet many of their concerns about former procedures in use at the College. The opportunity for lecturers to apply for promotion and state their own case for consideration; the institution of a promotions panel, including staff representatives, to consider applications; the inclusion of specific criteria with specific weightings; the provision for interviews in those cases where the promotion panel judges that two or more candidates are of similar merit; the greater opportunity given to Governors to scrutinise the basis upon which recommendations for promotion are made; and the provision for candidates to be informed of their scores and given counselling, are all features which come into this category.

There are still, however, aspects of the procedures which require further consideration, and both the Principal and the Local Authority foresaw that this might well be the case. These aspects are, to a great extent, brought into focus by the complaints of the women lecturers at the College concerning the operation of the new procedures in the 1982/83 round of promotions.

The complaint concerning the L.II promotion in Business Studies has highlighted a difficulty concerning the criteria used for scoring individual applicants, and the weighting attached to each of the criteria. The Commissioners note that these criteria bear a marked similarity to those used in the 1978/79 promotions, on which occasion, the Commissioners have found, the application of the criteria led to sex discrimination against certain women lecturers in the Business Studies Department. Having examined the result of the application of the present criteria in the Business

Studies Department in the 1982/83 promotions, the Commissioners consider that the present criteria, and the weighting attached to each of these criteria, are still at risk of operating to the disadvantage of women lecturers in the Business Studies Department.

The complaint concerning the L.II promotion in Science and Mathematics raises issues concerning the clarity of the new procedures and their method of application. The lack of clarity concerning the question of whether, and in what detail, the duties and responsibilities of promoted posts should be made known in advance to applicants has had serious consequences for the 1982/83 promotions and needs to be remedied.

Thus, while commending the Local Authority's attempt to establish a common promotion system which would be fair to all lecturing staff concerned, the Commissioners conclude that there are still certain features of the system which make it at risk of leading to acts of unlawful sex discrimination against women lecturers in the Business Studies Department as regards their access to opportunities for promotion. In Chapter 12 the Commissioners set out recommendations, in the light of their findings for the elimination of sex discrimination and the promotion of equality of opportunity in the promotion system.

PART C

RECOMMENDATIONS

CHAPTER 12

THE RECOMMENDATIONS

In the light of the findings of this investigation, it appears necessary and expedient to the Commissioners to make recommendations under s.60(1) of the Act to the Gwent County Council with a view to promoting equality of opportunity between men and women in relation to promotions at the College. For the effective carrying out of these recommendations the County Council should:

a) take careful note of the findings and conclusions contained in this Report;

b) consult the Commission's draft Code of Practice which gives advice to employers and trade unions on measures to achieve equality of opportunity between men and women in employment;

c) involve the relevant trade unions, both in reviewing established promotion procedures to ensure that they are consistent with the law and in monitoring the procedures regularly.

Advice and assistance on implementing the recommendations and on any other matters concerning the promotion of equality of opportunity in employment is available from the Commission.

Certain of the recommendations are of a specific nature and arise directly from the findings and conclusions of this investigation; others are of a more general nature and reflect the Commission's draft Code of Practice which gives advice to all employers.

In their representations upon the Draft Report the named parties expressed their disappointment that the Commissioners had not produced their own detailed model promotion system for the Authority's consideration. However, it is for individual organisations, which have detailed knowledge about their own needs, to adopt employment practices which take into account these needs while meeting the requirements of the Act. The Commission considers that it would be inappropriate for it to appear to usurp the proper role of individual employers in

devising the mode of compliance with the Act which is best-suited to their particular circumstances. The Commission has issued a draft Code of Practice for the elimination of sex discrimination and the promotion of equality of opportunity between men and women in employment. It has also issued a booklet entitled "A model Equal Opportunity Policy' based upon a Policy which has been implemented by an employer in consultation with recognized trades unions. Both of these publications are intended as aids to employers wishing to develop their own Equal Opportunities Policies and can be adapted to suit the needs of individual organisations. Recommendations are made in this Report in relation to the Authority's present promotion practices in the College. If the Authority requires further advice and assistance then, as is stated above, this is available upon application to the Commission.

A. Specific Recommendations

The County Council should:

1. Give clear written guidance and provide training to the Principal of the College and to the Governing Body of the College about their duties under the Sex Discrimination Act 1975. The Principal should ensure that such guidance and training is given to Heads of Department and other members of the lecturing staff in the College.

2. Devise effective means to ensure that the method of allocating upgradings to departments, including the criteria for allocating upgradings and the weighting given to each, is as objective as possible.

3. Examine the criteria used for assessing individuals for promotion vacancies to ensure that the criteria and their application do not lead to, and do not create a serious risk that they will result in, unlawful sex discrimination.

4. Examine the weightings attached to the criteria used for assessing individuals for promotion vacancies to ensure that these weightings do not lead to, and do not create a serious risk that they will result in, unlawful sex discrimination.

5. Give clear written guidance and training to the promotions panels concerning the application of the criteria to individuals to ensure that this application does not lead to, and does not create a serious risk that it will result in unlawful sex discrimination.

6. Clarify the promotion procedures to ensure that duties and responsibilities of promoted posts are specified in writing at the time when applications are invited, and give clear written guidance to the Principal on this matter.

B. General Recommendations

In relation to the employment of lecturing staff at the College, the County Council should:

1. Formulate an equal opportunity policy. This is a commitment by an employer to employment policies, procedures and practices which do not discriminate on grounds of sex or marriage, and which provide genuine equality of opportunity between men and women. This policy should be in writing.

2. Publish a policy statement. To be effective, a Policy must be seen to have the support of Management and Trade Unions at the highest level. The County Council should issue a written statement, setting out its commitment to equal opportunity, its opposition to discrimination on grounds of sex or marriage and its determination to adopt the appropriate procedures and practices to achieve these.

3. Adopt the following procedure to ensure that the Policy is fully effective:

   a) assign overall responsibility for the Policy to a senior member of management.

   b) negotiate with the relevant trade unions any action required by the Policy.

   c) ensure that the Policy is known to all employees and, where reasonably practicable, to all job applicants.

4. Monitor the Policy regularly to ensure that it is working in practice. This is best undertaken by a joint Management/Trade Union Review Committee.